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Nevada Bar #3499  
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711 South Eighth Street  
Las Vegas, Nevada 89101  
Phone: (702) 382-2600  
Attorneys for Debtor(s)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\*\*\*\*\*

In the matter of:	)	Case No: BK-09-32126-LBR
	)	Chapter 13
JAMES W. RUSSELL, III and	)	
SYLVIA J. RUSSELL	)	
	)	
Debtors.	)	Date: 7-29-10
	)	Time: 3:00 p.m.
	)	Kathleen A. Leavitt

**MOTION TO VALUE DEBTORS' PRINCIPAL RESIDENCE AND AVOID WHOLLY  
UNSECURED LIEN(S) ENCUMBERING SAME, TO MODIFY THE RIGHTS OF  
LIENHOLDERS AND OBJECTION TO LIENHOLDERS'  
PROOF(S) OF CLAIM, IF ANY**

Come Now Debtors, James W. Russell, III and Sylvia J. Russell, by and through their legal counsel, David M. Crosby, Esq., of the law firm Crosby & Associates, who respectfully move this Court to value Debtors' principal residence, determine the junior lien of JP Morgan Chase Bank, N.A. successor by interest to Washington Mutual, to be wholly unsecured, to avoid said wholly unsecured lien and to modify the rights of said creditors accordingly including determining the claims (pursuant to proof(s) of claim which such lienholder may file or have filed) to be unsecured where there is insufficient equity in the residence to secure more than the first lien.

This Motion is brought pursuant to 11 U.S.C. §502(a), §506(a), §1322(b)(2), and Bankruptcy Rules 3012 and 9014, the Points and Authorities set forth below and  
///

all documents and pleadings on file herein.

Dated this 16<sup>th</sup> day of June, 2010.

CROSBY & ASSOCIATES

By:

David M. Crosby Esq.  
Attorney For Debtor(s)

-----

**POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

1. Debtors filed a Chapter 13 petition in the United States Bankruptcy Court, District of Nevada on November 23, 2009.

2. On the date of the petition, Debtors were the owners of real property used as their principal residence known and described as 1104 Nawkee Dr., Las Vegas NV 89031 (Exhibit "1") legally described as follows:

Lot 3 in Block 7 of El Dorado-R1-90 # 3, SEC 28 TWP 19  
RNG 61, as shown by map thereof on file in Book 45 of  
Plats, Page 18, in the Office of the County Recorder of Clark  
County, Nevada

APN: 124-28-718-003

3. The value of said principal residence at the time their Chapter 13 Petition was filed was \$ 166,650.00 as set forth in an internet appraisal of subject property (Exhibit "2").

4. Said property at the time of filing was encumbered by the following liens allegedly evidenced by Promissory Notes and

*Get Cyberhomes appraisal*

1 First Mortgage: (Exhibit "3")  
 2 Wells Fargo Bank, N.A. \$ 170,147.00  
 3 c/o Gregory Wilde, Esq.  
 4 Wilde & Associates  
 208 South Jones Boulevard  
 Las Vegas, NV 89107  
 Loan # XXXXXX9368

5 Junior Mortgage: (Exhibit "4")  
 6 JP Morgan Chase Bank, N.A. successor \$ 99,221.78  
 7 by interest to Washington Mutual  
 National Payment Services  
 8 P.O.Box 24785  
 Columbus, OH 43224  
 Loan # XXXXXX7748

9 5. As of the date Debtors' Chapter 13 Petition was filed no equity existed in  
 10 said property above the claim of the first mortgage holder identified above. The claim of  
 11 the junior mortgage holder identified above was wholly unsecured on the date of the  
 12 Petition and if said property were foreclosed or otherwise sold at auction on that date  
 13 there would be insufficient proceeds to pay anything to JP Morgan Chase Bank, N.A.  
 14 successor by interest to Washington Mutual pursuant to its junior lien.

15 6. Debtors declare that the junior claim of JP Morgan Chase Bank, N.A.  
 16 successor by interest to Washington Mutual is unsecured and should be reclassified as  
 17 unsecured to share pro rata with other general unsecured creditors through the debtors'  
 18 Chapter 13 plan with any proofs of claim filed by it modified accordingly to document the  
 19 claim as unsecured, and that the junior lien filed by JP Morgan Chase Bank, N.A.  
 20 successor by interest to Washington Mutual as identified above encumbering subject  
 21 property be properly avoided by Order of this Court.

## 22 II.

### 23 LEGAL ARGUMENT

#### 24 A. A Wholly Unsecured Lien Encumbering Debtor's Principal Residence May 25 be Avoided Because Modification is Authorized/Not Prohibited by 11 U.S.C. § 1322(b)(2).

26 11 U.S.C. §1322(b)((2) provides in pertinent part:  
 27  
 28

(b) Subject to subsections (a) and © of this section, the plan may—

\* \* \* \* \*

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest that is secured by an interest in real property that is the debtor's principal residence, .....

The junior claim by JP Morgan Chase Bank, N.A. successor by interest to Washington Mutual identified above has no security in Debtors' residence based on the fair market value of the property and as a result is not a "secured claim" as defined and therefore not restricted by this section.

**B. The Claim by Lienholder May be Bifurcated into Secured and Unsecured Claims Pursuant to 11 U.S.C. §506(a).**

11 U.S.C. § 506(a)(1) provides in pertinent part:

(a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition

In re Zimmer, 313 F.3d 1220, 1221 (9th Cir.2002), accepted what was the majority view in the various circuits, that a, wholly unsecured lienholder is not entitled to the protection of 11 U.S.C. §1322(b)(2). The Court stated that a wholly unsecured lienholder's claim can be modified and reclassified as a general unsecured claim pursuant to 11 U.S.C. §506(a), despite the anti-modification language in §1322(b)(2).

**C. Any Proof of Claim Filed by Named Lienholders Should be Conformed by Order of This Court to any Modification of Their Rights Determined by This Court.**

11 U.S.C. § 502 provides that a claim of interest represented by proper Proof of Claim filed pursuant to section 501 is deemed allowed unless objected to. Debtors herewith have objected to any and all Proofs of Claim which may have been filed by JP Morgan Chase Bank, N.A. successor by interest to Washington Mutual pursuant to its junior lien and request that any Proof(s) of Claim of same representing such claims be modified accordingly to unsecured claims consistent with the Order of this Court determining JP Morgan Chase Bank, N.A. successor by interest to Washington Mutual's junior claim to be wholly unsecured.

### III.

### CONCLUSION

Debtors respectfully request determination of value of Debtors' primary residence to be less than the amount of the first lien and argue that since the junior claim of JP Morgan Chase Bank, N.A. successor by interest to Washington Mutual is wholly unsecured it may be avoided and "stripped off" pursuant to 11 U.S.C. §1322(b)(2) and §506(a); that the said junior claim of JP Morgan Chase Bank, N.A. successor by interest to Washington Mutual be reclassified as general unsecured claims to be paid pro rata with other general unsecured creditors through the debtors Chapter 13 plan and that any Proofs of Claim of the lienholders be modified accordingly.

WHEREFORE, Debtors pray that this Court:

1. Determine the value of Debtors' principal residence to be \$ 166,650.00 or such other amount as may be less than the balance of the first lienholder as of the date of the Petition; and
2. Avoid and extinguish JP Morgan Chase Bank, N.A. successor by interest to Washington Mutual's junior lien pursuant to 11 U.S.C. Section 506(a) upon completion of the Debtors' Chapter 13 plan; and

1           3.     Reclassify the junior claim of JP Morgan Chase Bank, N.A. successor by  
2 interest to Washington Mutual as general unsecured claim to be paid pro rata with other  
3 general unsecured creditors through the Debtors' Chapter 13 plan.

4           4.     Conform any Proofs of Claims filed by JP Morgan Chase Bank, N.A.  
5 successor by interest to Washington Mutual pursuant to its junior lien to the unsecured  
6 status of said claim as determined by this Court.

7           5.     Order such other relief as the Court may deem appropriate.

8  
9     Dated this 10 day of June, 2010.

10                   Respectfully Submitted:

11                   CROSBY & ASSOCIATES

12  
13           By:

14                     
15                   David M. Crosby, Esq.  
16                   Attorney for Debtor

GENERAL INFORMATION	
PARCEL NO.	124-28-718-003
OWNER AND MAILING ADDRESS	RUSSELL JAMES W & SYLVIA J 1104 NAWKEE DR NO LAS VEGAS NV 89031-1426
LOCATION ADDRESS CITY/UNINCORPORATED TOWN	1104 NAWKEE DR NORTH LAS VEGAS
ASSESSOR DESCRIPTION	ELDORADO-R1-90 #3 PLAT BOOK 45 PAGE 18 LOT 3 BLOCK 7  SEC 28 TWP 19 RNG 61
RECORDED DOCUMENT NO.	* 19990309:02101
RECORDED DATE	03/09/1999
VESTING	JOINT TENANCY

\*Note: Only documents from September 15, 1999 through present are available for viewing.

ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE	
TAX DISTRICT	250
APPRAISAL YEAR	2009
FISCAL YEAR	09-10
SUPPLEMENTAL IMPROVEMENT VALUE	0
SUPPLEMENTAL IMPROVEMENT ACCOUNT NUMBER	N/A

REAL PROPERTY ASSESSED VALUE		
FISCAL YEAR	2009-10	2010-11
LAND	14000	12250
IMPROVEMENTS	66073	54222
PERSONAL PROPERTY	0	0
EXEMPT	0	0
GROSS ASSESSED (SUBTOTAL)	80073	66472
TAXABLE LAND+IMP (SUBTOTAL)	228780	189920
COMMON ELEMENT ALLOCATION ASSD	0	0
TOTAL ASSESSED VALUE	80073	66472
TOTAL TAXABLE VALUE	228780	189920

ESTIMATED LOT SIZE AND APPRAISAL INFORMATION	
ESTIMATED SIZE	0.23 Acres
ORIGINAL CONST. YEAR	1990
LAST SALE PRICE MONTH/YEAR	203000 03/99
LAND USE	1-10 RESIDENTIAL SINGLE FAMILY
DWELLING UNITS	1

PRIMARY RESIDENTIAL STRUCTURE					
TOTAL LIVING SQ. FT.	3105	CARPORT SQ. FT.	0	ADDN/CONV	NONE
1ST FLOOR SQ. FT.	1654	STORIES	TWO STORY	POOL	NO
2ND FLOOR SQ. FT.	1451	BEDROOMS	4	SPA	NO
BASEMENT SQ. FT.	0	BATHROOMS	3 FULL	TYPE OF CONSTRUCTION	FRAME STUCCO
GARAGE SQ. FT.	736	FIREPLACE	2	ROOF TYPE	CONCRETE TILE

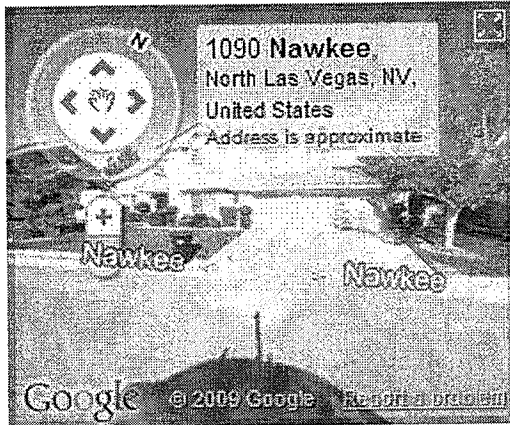




Street Address

- Home Values
- Local Info
- Find a Pro
- Broker / Agent Services

1104 Nawkee Dr North Las Vegas, NV 89031 ★ Add to favorites



### Estimated Home Values:

eppraisal \$227,257

Zillow.com \$276,500

cyberhomes \$166,650

View Value Ranges

➔ Get a detailed analysis report

Proj

Public

Bedr

Bathr

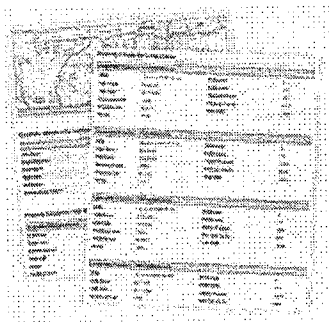
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☒ Market Trends

☒ Subject Property

☒ Comparable Properties

- Owner Information
- Tax Assessor Data
- Sales History and more!

- Summary Statistics
- Property Details
- Bank Owned?

Get Detailed Report

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## Recently Sold Homes

List View

Map View

Address	Sales Price	Sale Date	Bed/Bath	Sq. Ft.
1841 Gentle Dawn Ave North Las Vegas, NV 89084	\$225,000	2/4/2010	4/3	2696

Dollars (\$)



1111 Calico Cactus Ln North Las Vegas, NV 89031	\$225,000	12/14/2009	4/3	2747
6324 Black Oaks St North Las Vegas, NV 89031	\$210,000	11/18/2009	4/3	2747
6049 Starpoint Rd North Las Vegas, NV 89031	\$205,000	9/2/2009	4/4	3006
931 Crescent Moon Dr North Las Vegas, NV 89031	\$193,000	8/19/2009	4/4	3006

Home  
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#### Recent Sales

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## North Las Vegas Real Estate Professionals

#### Real Estate Agent

Paul & Linda Watkins

(702) 722-9360

Cell Phone:(702) 768-5398

North Las Vegas Real Estate Agents

#### Contact a local Real Estate Agent

Paul & Linda Watkins

ReMax Associates

9330 W. Sahara Suite 210

Las Vegas, NV 89117

(702) 722-9360

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(requires registration)

Paul & Linda Watkins are active Real Estate Investors. As Investors they are continually examining the Las Vegas area market for the best opportunities in Real Estate. Primarily focusing on investment properties, or they will gladly to help you find your Dream. They have put together 2 teams one that exclusively represents Investors who want to buy with confidence at the Court House steps or anywhere in the Clark County, and one that helps people find their Dream Home. How can we serve you?

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1104 Nawkee  
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age in North l  
income is \$0.

B6D (Official Form 6D) (12/07) - Cont.

In re **James W. Russell, III,  
Sylvia J. Russell**Case No. **09-32126**

Debtors

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	C O D E B O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
		DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN					
Account No. 41	C	2002					
Diamond Resorts FS 10600 W. Charleston Blvd. Las Vegas, NV 89135		Mortgage					
		Value \$ 0.00				4,807.00	4,807.00
Account No. 3068	C	2007					
Toyota Motor Leasing Mail Drop FN22 19001 S. Western Ave. Torrance, CA 90501-1106		Auto Loan  2008 Lexus RX350 (lease vehicle)					
		Value \$ 0.00				10,140.00	10,140.00
Account No. 1000	C	2004					
Washington Mutual Bank 8524 W. Lake Mead Blvd. Las Vegas, NV 89128		Home equity loan  1104 Nawkee Dr. N. Las Vegas, NV 89031					
		Value \$ 268,000.00				98,097.00	244.00
Account No. 9368	C	1999					
Wells Fargo Home Mortgage 7255 Baymeadows Wa Jacksonville, FL 32256		Mortgage  1104 Nawkee Dr. N. Las Vegas, NV 89031					
		Value \$ 268,000.00				170,147.00	0.00
Account No. 0128	C	Mortgage					
Wyndham Vacation Resorts 8427 South Park Cr. Orlando, FL 32819		Wyndham Grand Desert (SURRENDER) 265 E. Harmon Las Vegas, NV 89169					
		Value \$ 0.00				35,000.00	35,000.00
Subtotal (Total of this page)						318,191.00	50,191.00
Total (Report on Summary of Schedules)						353,168.00	85,168.00

Sheet 1 of 1 continuation sheets attached to  
Schedule of Creditors Holding Secured Claims

FORM B10 (Official Form 09-32126-lbr Claim 5-1 Filed 01/25/10 Page 1 of 23)

## UNITED STATES BANKRUPTCY COURT DISTRICT OF NEVADA

Name of Debtor: **James W. Russell III, Sylvia Russell** Case Number: **09-32126**Name of Creditor (The person or entity to whom the debtor owes money or property)  
**JP Morgan Chase Bank NA successor by interest to Washington Mutual**

## Name and Address for Disbursements:

**JP Morgan Chase Bank, N.A.  
National Payment Services  
PO Box 24785  
Columbus, OH 43224**

## Forward Correspondence/Notices to:

**JP Morgan Chase Bank, N.A.  
2901 Kinwest Pkwy  
Irving, TX 75063-5812  
Attn: Bankruptcy Department**

Account or other number by which creditor identifies debtor:

XXXXXXXX 7748

- ☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
- ☐ Check box if you have never received any notices from the bankruptcy court in this case.
- ☒ Check box if the address differs from the address on the envelope sent to you by the court.

RECEIVED &amp; FILED

10 JAN 25 P2:53

U.S. BANKRUPTCY COURT  
MARY A. SCHOTT, CLERK

THIS SPACE IS FOR COURT USE ONLY

## 1. Basis for Claim

- ☐ Goods sold
- ☐ Services performed
- ☒ Money loaned
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ☐ Other \_\_\_\_\_

- ☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
- ☐ Wages, salaries, and compensation (fill out below)
- Your SS #: \_\_\_\_\_
- Unpaid compensation for services performed from \_\_\_\_\_ to \_\_\_\_\_

(date)

(date)

2. Date debt was incurred: **6/3/2004**

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed: **\$99221.78**

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

☒ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

## 5. Secured Claim.

- ☒ Check this box if your claim is secured by collateral (including a right of setoff).
- Brief Description of Collateral: **HELOC**
- ☒ Real Estate ☐ Motor Vehicle
- ☐ Other \_\_\_\_\_

Value of Collateral: \$

Amount of arrearage and other charges at time case filed included in secured claim, if any: **\$1124.3**

## 6. Unsecured Priority Claim.

- ☐ Check this box if you have an unsecured priority claim
- Amount entitled to priority \$ \_\_\_\_\_
- Specify the priority of the claim:
- ☐ Wages, salaries, or commissions (up to \$4000), \* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
- ☐ Contribution to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- ☐ Up to \$1,800\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- ☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- ☐ Taxes or penalties owed to government units - 11 U.S.C. § 507(a)(8).
- ☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(\_\_\_\_).
- \* Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respects to cases commenced on or after the date of adjustment.

7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date

1/20/10

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

/s/ Tina Batty Telephone No: 866-520-6447

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

C-1124

**EXHIBIT A****TO PROOF OF CLAIM**

CLAIMANT: JP Morgan Chase Bank NA successor by interest to Washington Mutual

**BANKRUPTCY CASE**

CASE NUMBER: 09-32126

DEBTOR (S): James W. Russell III, Sylvia Russell

LOAN NUMBER: XXXXXXXXX 7748

**SUMMARY**

AS OF 11/23/2009

The principal amount owing on the above loan was:	\$98097.48
Plus interest due in the amount of:	\$1109.3
Plus interest short balance of:	\$0.00
Plus escrow advances of:	\$0.00
Plus late charges of:	\$15
Less buydown balance of:	\$0.00
Less subsidy balance of:	\$0.00
Less borrower subsidy balance of:	\$0.00
Less forbearance suspense balance of:	\$0.00
Less borrower suspense balance of:	\$0.00
Less trustee suspense balance of:	\$0.00
Less miscellaneous suspense balance of:	\$0.00
Less other suspense balances of:	\$0.00
Plus: NSF fee:	\$0
Plus Annual fee:	\$0
Plus total expenses of:	\$0
For a total due in the amount of:	\$99221.78

**ARREARAGES**

Installment Payments:	\$812.33
Late charges:	\$15
Additional Interest	\$296.97
Unpaid Fees:	\$0, 0
Expenses: Foreclosure fees:	\$0
Bankruptcy fees:	\$0
Loss mitigation fees:	\$0.00
REO fees:	\$0.00
Additional liens:	\$0
Appraisal/BPO fees	\$0
Property taxes:	\$0
Property insurance:	\$0
MI premiums:	\$0.00
Utilities(water,etc.):	\$0.00
Property Preservation:	\$0
Title charges	\$0
Filing fee	\$0
Title report	\$0
Meet 3rd Party	\$0.00
Total expenses:	\$0

**TOTAL ARREARAGE CLAIM: \$1124.3**

The above figures represent the delinquency at the time of filing and do not reflect payments received after the date of the filing of the bankruptcy

**US Bankruptcy Court Clerk**

Re: James W. Russell III, Sylvia Russell

Chapter 13

Case Number 09-32126

JP Morgan Chase Bank NA successor by interest to Washington Mutual

Account Number: XXXXXXXXX 7748

Dear Clerk of the Court:

JP Morgan Chase Bank NA , , is filing a claim in the bankruptcy case referenced above. Enclosed are the following:

1. Original Proof of Claim with attached supporting documents;
2. Two copies of the Proof of Claim; and
3. Self-addressed, stamped return envelope.

Please file the original Proof of Claim and acknowledge your receipt by date stamping one of the copies and returning it in the envelope provided.

If you have any questions, please contact the bankruptcy account officer, listed below.

Thank you for your attention to this matter.

Sincerely,

Tina Batty

( 866) 520-6447

David M. Crosby, Esq.  
Nevada Bar #3499  
CROSBY & ASSOCIATES  
711 South Eighth Street  
Las Vegas, Nevada 89101  
Phone: (702) 382-2600  
Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\*\*\*\*\*

In the matter of:

JAMES W. RUSSELL, III and  
SYLVIA J. RUSSELL

Debtors.

Case No: BK-09-32126-LBR  
Chapter 13

Date: 7-29-10  
Time: 3:00 p.m.  
Kathleen A. Leavitt

**ORDER GRANTING**  
**MOTION TO VALUE DEBTORS' PRINCIPAL RESIDENCE AND AVOID WHOLLY**  
**UNSECURED LIEN(S) ENCUMBERING SAME, TO MODIFY THE RIGHTS OF**  
**LIENHOLDERS AND OBJECTION TO LIENHOLDERS'**  
**PROOFS OF CLAIM, IF ANY**

Debtors' Motion to Value Debtors' Principal Residence and Avoid Wholly  
Unsecured Lien(s) Encumbering Same, to Modify the Rights of Lienholders  
and Objection to Lienholders' Proofs of Claim, If Any having been duly filed and  
served on Wells Fargo Home Mortgage and JP Morgan Chase Bank, N.A. successor  
by interest to Washington Mutual and having come before this Court for hearing on  
the date and at the time set forth above with Debtors appearing by and through their

1 legal counsel, Troy S. Fox, of the law firm of Crosby & Associates and none of the  
2 named lienholders/ lenders/servicers having appeared or otherwise having  
3 responded and good cause appearing therefor;

4 THE COURT HEREBY FINDS:

5 1. On the date of the petition, Debtors were the owners of real property  
6 used as their principal residence known and described as 1104 Nawkee Dr., Las  
7 Vegas NV 89031 legally described as follows:

8 Lot 3 in Block 7 of El Dorado-R1-90 # 3, SEC 28 TWP 19  
9 RNG 61, as shown by map thereof on file in Book 45 of  
Plats, Page 18, in the Office of the County Recorder of  
Clark County, Nevada

10 APN: 124-28-718-003

11 2. The value of said principal residence at the time Debtor filed his  
12 Chapter 13 Petition was \$ 166,650.00 which is less than the balance of the claim(s)  
13 of the first lienholder as of the date of the Petition.

14 3. Said property at the time of filing was subject to the following liens  
15 evidenced by Promissory Notes and Deeds of Trust:

16 First Mortgage:

17 Wells Fargo Bank, N.A. \$ 170,147.00  
18 c/o Gregory Wilde, Esq.  
19 Wilde & Associates  
20 208 South Jones Boulevard  
Las Vegas, NV 89107  
Loan # XXXXXX9368

21 Junior Mortgage:

22 JP Morgan Chase Bank, N.A. successor \$ 99,221.78  
23 by interest to Washington Mutual  
National Payment Services  
P.O.Box 24785  
Columbus, OH 43224  
Loan # XXXXXX7748

24 4. That on the filing date of the instant Chapter 13 petition, the claim  
25 represented by the junior lien of JP Morgan Chase Bank, N.A. successor by interest  
26 to Washington Mutual was wholly unsecured and may therefore be avoided pursuant  
27



1 to 11 U.S.C. Section 506(a) and §1322(b)(2) upon completion of the Debtors'  
2 Chapter 13 plan; and

3 5. Said claim is properly reclassified as a non-priority general unsecured  
4 claim to be paid pro rata with other non-priority general unsecured creditors through  
5 the Debtor's Chapter 13 plan; and

6 6. That it is consistent with the above findings that any claim(s) as  
7 identified in Proofs of Claims filed by JP Morgan Chase Bank, N.A. successor by  
8 interest to Washington Mutual be modified to non-priority general unsecured status.

9 IT IS THEREFORE ORDERED THAT:

10 1. The claim represented by the junior lien of JP Morgan Chase Bank,  
11 N.A. successor by interest to Washington Mutual be and is herewith avoided and  
12 "stripped off" from Debtors' principal residence upon completion of Debtor's Chapter  
13 13 plan and shall henceforth be treated as a "non-priority general unsecured claim"  
14 pursuant to 11 U.S.C. §506(a);

15 2. That any Proofs of Claim filed by JP Morgan Chase Bank, N.A.  
16 successor by interest to Washington Mutual be conformed to the findings herein as  
17 non-priority general unsecured claims to be paid pro rata with other non-priority  
18 general unsecured creditors through the Debtors' Chapter 13 plan.

19 3. JP Morgan Chase Bank, N.A. successor by interest to Washington  
20 Mutual shall retain its claim(s) for the full amount under the loans referenced above  
21 in the event of either the dismissal of Debtors' Chapter 13 case or the conversion of  
22 the Debtor's Chapter 13 case to any other Chapter under the United States  
23 Bankruptcy Code.

24 ///

25 ///

26 ///

27 ///

1 Dated this \_\_\_\_ day of July, 2010.

2  
3 Submitted By:

4 CROSBY & ASSOCIATES

5  
6 David M. Crosby, Esq.  
7 Nevada Bar #3499  
8 CROSBY & ASSOCIATES  
9 711 South Eighth Street  
10 Las Vegas, Nevada 89101  
11 Attorneys for Debtor

12 Approved/Disapproved

13 Kathleen A. Leavitt  
14 Chapter 13 Trustee

15 **ALTERNATIVE METHOD RE: RULE 9021**

16 In accordance with Local Rule 9021, counsel submitting this document  
17 certifies as follows (check one):

18 \_\_\_\_ The court has waived the requirement of approval under LR 9021.

19 X This is a chapter 7 or **13 case**, and either **with the motion**, or at the hearing, I have  
20 delivered a copy of this proposed order to all counsel who appeared at the hearing, any  
21 unrepresented parties who appeared at the hearing, and each has approved or disapproved the  
22 order, or failed to respond, as indicated below [list each party and whether the party has  
23 approved, disapproved, or failed to respond to the document]: **all parties listed on certificate**  
24 **of mailing**

25 \_\_\_\_ This is a chapter 9, 11, or 15 case, and I have delivered a copy of this proposed order to  
26 all counsel who appeared at the hearing, any unrepresented parties who appeared at the  
27 hearing, and each has approved or disapproved the order, or failed to respond, as indicated  
28 below [list each party and whether the party has approved, disapproved, or failed to respond to  
the document]:

X   **I certify that I have served a copy of this order with the motion**, and no parties appeared or filed written objections.

<u>CHAPTER 13 TRUSTEE:</u>	APPROVED	DISAPPROVED	FAILED TO RESPOND
Kathleen A. Leavitt			

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

/s/ Katthia Nunez Pelotte  
An employee of Crosby & Associates

Submitted By:

CROSBY & ASSOCIATES

\_\_\_\_\_  
David M. Crosby, Esq.